IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 681 OF 2005

Satish Dattatraya Deorukhkar .. Appellant

Vs.

The Chief Officer, Maharashtra Housing and Area Development Authority and ors. .. Respondents

Mr. Uday Warunjikar with Mr. Harshal Marathe for appellant.
Ms. Geeta Mulekar, Govt. Pleader for Respondent Nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : October 07, 2005.

P.C.:

1. Heard Mr. Warunjikar the learned counsel for the appellant-plaintiff and Ms. Mulekar, the learned counsel for the respondent nos.1 and 2 who are original defendants.

2. The plaintiff is aggrieved by the order dated 3/5/2005 passed by the learned Judge of the City Civil Court at Mumbai dismissing Notice of Motion No.5227 of 2004 filed in S.C. Suit No.5835 of 2004. The plaintiff claims that the said suit has been filed by him pursuant to the liberty granted by this Court

(Division Bench) while deciding Writ Petition No.2898 of 2004 on 13/9/2004. The petitioner before this court in the said writ petition was the daughter of deceased tenant of the premises, namely, 9, AB Dr. Bhalerao Marg, Girgaon, Mumbai. This tenement occupied by the petitioner's father i.e. Mahadeo Deorukhkar was in dilapidated condition and, therefore, on 26/5/1981 the respondent nos.1 and 2 issued the notice for vacating the said premises. On 12/8/1983 an alternative accommodation in the transit camp was allotted to Mahadeo Deorukhkar in Gala No.30/431 Colaba Bombay Transit Camp. The petitioner - daughter as well as the present appellant had shifted to the transit accommodation and the daughter was minor at that time. She alleged that on 19/3/1984 Mahadeo executed an affidavit in favour of the plaintiff and on 16/11/1984 he wrote a letter requesting the MHADA authorities to transfer the tenancy rights in favour of the plaintiff who is his nephew. On 26/12/1985 i.e. after the demise of Mahadeo on 21/1/1985, MHADA passed an order transferring the tenancy in the name of the plaintiff on the basis of the affidavit dated 19/3/1984. However, the respondent no.1 issued notice to the

plaintiff on 19/11/1997 and asked him to vacate the Colaba Transit Camp and he was evicted on 8/2/2000. In the meanwhile, the Deputy Chief Officer of MHADA passed an order on 6/3/1998 and recalled the earlier order dated 26/12/1985 transferring the tenancy in favour of the plaintiff. Against this order the plaintiff preferred an appeal on 25/3/1998 and it was dismissed. After dismissal of the appeal the plaintiff approached this court in W.P. No.139 of 2000 and during the pendency of this petition he was evicted from the Transit Camp. On 15/2/2000 this court (Single Bench) was pleased to dismiss the petition holding that it had become infructuous on eviction of the petitioner. The plaintiff filed fresh petition which was also rejected by this court. Inspite of these failures of the plaintiff surprisingly on 16/8/2005 MHADA passed an order in favour of the plaintiff granting him a transit accommodation purportedly in lieu of Gala No.30/431 from the Colaba Transit Camp. The Division Bench of this Court in para 4 of the order dated 13/9/2004 made the following observations against the officers of MHADA on account of passing the order dated 6/3/1998:-

> "It seems that inspite of the aforesaid rejection of the writ petition, the MHADA officers obviously in connivance with the 3rd respondent once again put him back in possession of the transit camp namely, 8/10 Mahavir Nagar Transit Camp, Kandivli, Mumbai. Thus, the 3rd respondent occupied the said premises and consequently the rights of the petitioner who is the only legal heir of the deceased being the daughter of the said petitioner who was minor at the relevant time and now became major were totally defeated. The effect of the aforesaid order putting him back in transit camp was that the petitioner who is entitled to the premises in the reconstructed premises, namely, at Girgaon, Mumbai would not be handed over possession thereof and her rights will be defeated. It is because by reinducting the respondent no.3 in transit camp he has been made eligible for the premises in reconstructed building.....
>
> We are quite surprised with the conduct of the officers of MHADA who have purportedly sought to transfer the tenancy as well as vacation notice in favour of the 3rd respondent by relying upon a so called affidavit dated 19.3.1984 and letter dated 16.11.1984 after the death of an original tenant."

3. The liberty granted to the plaintiff by the Division Bench of this court in para 9 of the said order is obviously for deciding his right along with the petitioner i.e. Mrs. Manisha Kantharia who is the plaintiff's cousin and the said liberty does not mean that his right for a separate premises being allotted is to be adjudicated in the suit. If the plaintiff succeeds in the suit he may have a joint right along

with the present respondent no.3 and not as against the respondent nos.1 and 2. It cannot be accepted that for one tenanted quarter, two transit camps or two permanent allotments would be considered by MHADA. Thus, the refusal by the trial court to protect the plaintiff in the impugned order dated 3/5/2005 dismissing the Notice of Motion does not call for any interference and more so because of the view taken by the Division Bench of this court in the matter.

4. The appeal is, therefore, dismissed in limine.

Suit is expedited.

(B.H. Marlapalle,J.)